laws to property disposal, was transferred to section 488 of former Title 40, and was repealed and reenacted as section 559 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 238, acts June 30, 1949, ch. 288, title II, §208, 63 Stat. 391; Sept. 5, 1950, ch. 849, §7(b), (c), 64 Stat. 590, which related to appointment and compensation of personnel, was transferred to section 630h of former Title 5, Executive Departments and Government Officers and Employees, subsequently transferred to section 758 of former Title 40, and repealed and reenacted as section 311(a)–(c) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 239, act June 30, 1949, ch. 288, title II, §209, 63 Stat. 392, which related to civil remedies and penalties, was transferred to section 489 of former Title 40, and was repealed and reenacted as section 123 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 239a, act June 30, 1949, ch. 288, title II, §210, as added Sept. 5, 1950, ch. 849, §5(c), 64 Stat. 580, which related to operation of buildings and related activities by the Administrator, was transferred to section 490 of former Title 40, and was repealed and reenacted as sections 581 to 585(a)(1), (2) (1st sentence, last sentence (words before ''and the obligation'')), (b), 586(a)–(c), 587(a)–(b)(4)(A), (c), 588, 589, 592(a)–(c)(1), (d), (e) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 239b, act June 30, 1949, ch. 288, title II, §211, as added Sept. 5, 1950, ch. 849, §5(c), 64 Stat. 580, which related to motor vehicle identification, was transferred to section 491 of former Title 40, and was repealed and reenacted as sections 601 to 611 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Section 240, act June 30, 1949, ch. 288, title II, §212, formerly §210, 63 Stat. 393; renumbered Sept. 5, 1950, ch. 849, §5(a), 64 Stat. 580, which related to reports to Congress, was transferred to section 492 of former Title 40, and was repealed and reenacted as section 126 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

SUBCHAPTER IV—PROCUREMENT PROVISIONS

§ 251. Declaration of purpose of this subchapter

The purpose of this subchapter is to facilitate the procurement of property and services.

(June 30, 1949, ch. 288, title III, §301, 63 Stat. 393; July 12, 1952, ch. 703, §1(m), 66 Stat. 594.)

AMENDMENTS

1952—Act July 12, 1952, substituted ''property'' for ''supplies''.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, title XLIV, §4401, Feb. 10, 1996, 110 Stat. 678, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this division [div. D (§§4001–4402) of Pub. L. 104–106, see Short Title of 1996 Amendment note below], this division and the amendments made by this division shall take effect on the date of the enactment of this Act [Feb. 10, 1996].

''(b) APPLICABILITY OF AMENDMENTS.—

''(1) SOLICITATIONS, UNSOLICITED PROPOSALS, AND RELATED CONTRACTS.—An amendment made by this division shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 4402 [set out below] to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) OTHER MATTERS.—An amendment made by this division shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) DEMARCATION DATE.—The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be January 1, 1997, or any earlier date that is not within 30 days after the date on which such final regulations are published.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–355, title X, §10001, Oct. 13, 1994, 108 Stat. 3404, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act [see Short Title of 1994 Amendment note below] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 13, 1994].

''(b) APPLICABILITY OF AMENDMENTS.—(1) An amendment made by this Act shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment [set out below], with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

''(2) An amendment made by this Act shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 10002 to implement such amendment, with respect to any matter related to—

''(A) a contract that is in effect on the date described in paragraph (3);

''(B) an offer under consideration on the date described in paragraph (3); or

''(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

''(3) The date referred to in paragraphs (1) and (2) is the date specified in such final regulations [Oct. 1, 1995, see 60 F.R. 48231, Sept. 18, 1995]. The date so specified shall be October 1, 1995, or any earlier date that is not within 30 days after the date on which such final regulations are published.

''(c) IMMEDIATE APPLICABILITY OF CERTAIN AMENDMENTS.—Notwithstanding subsection (b), the amendments made by the following provisions of this Act apply on and after the date of the enactment of this Act [Oct. 13, 1994]: sections 1001, 1021, 1031, 1051, 1071, 1092, 1201, 1506(a), 1507, 1554, 2002(a), 2191, 3062(a), 3063, 3064, 3065(a)(1), 3065(b), 3066, 3067, 6001(a), 7101, 7103, 7205, and 7206, the provisions of subtitles A, B, and C of title III [§§3001–3025], and the provisions of title V [see Tables for classification].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VII, §2751, July 18, 1984, 98 Stat. 1203, provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [see Short Title of 1984 Amendments note below] shall apply with respect to any solicitation for bids or proposals issued after March 31, 1985.

''(b) The amendments made by section 2713 [amending section 759 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 759 of former Title 40] and subtitle D [enacting sections 3551 to 3556 of Title 31, Money and Finance] shall apply with respect to any protest filed after January 14, 1985.''

EFFECTIVE DATE

Section effective July 1, 1949, see section 605, formerly section 505, of act June 30, 1949, ch. 288, 63 Stat.

403; renumbered by act Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title VIII, §861, Oct. 14, 2008, 122 Stat. 4546, provided that: ''This subtitle [subtitle G (§§861–874) of title VIII of Pub. L. 110–417, enacting sections 417b and 440 of this title, amending sections 253, 254d, and 417 of this title and sections 2304 and 2313 of Title 10, Armed Forces, enacting provisions set out as notes under this section, sections 253h, 254, 254b, 405, and 433a of this title, and sections 1535 and 6101 of Title 31, Money and Finance, and repealing provisions set out as a note under section 2304 of Title 10] may be cited as the 'Clean Contracting Act of 2008'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–106, div. D, §4001, Feb. 10, 1996, 110 Stat. 642, as amended by Pub. L. 104–208, div. A, title I, §101(f) [title VIII, §808(a)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–393, provided that: ''This division [div. D (§§4001–4402) of Pub. L. 104–106, see Tables for classification] and division E [§§5001–5703 of Pub. L. 104–106, repealed and reenacted, generally, as subtitle III (§11101 et seq.) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, see Tables for complete classification] may be cited as the 'Clinger-Cohen Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–355, §1, Oct. 13, 1994, 108 Stat. 3243, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Acquisition Streamlining Act of 1994'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–577, §1, Oct. 30, 1984, 98 Stat. 3066, provided that this Act [enacting sections 253c to 253h, 414a, 418a, and 418b of this title, repealing section 2303a of Title 10, Armed Forces, amending sections 253, 253b, 259, 403, and 416 of this title, sections 2302, 2304, 2311, and 2320 of Title 10, and sections 637 and 644 of Title 15, Commerce and Trade, and enacting provisions set out as notes under this section, section 416 of this title, and sections 637 and 644 of Title 15] may be cited as the ''Small Business and Federal Procurement Competition Enhancement Act of 1984''.

Pub. L. 98–369, div. B, title VII, §2701, July 18, 1984, 98 Stat. 1175, provided that: ''This title [enacting sections 253a, 253b, 416 to 419 of this title and sections 3551 to 3556 of Title 31, Money and Finance, amending sections 252, 253, 254, 257, 258, 259, 260, 403, 405, and 414 of this title, sections 2301 to 2306, 2310, 2311, 2313, and 2356 of Title 10, Armed Forces, and section 759 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under this section, sections 253, 403, and 407 of this title, section 2304 of Title 10, and section 759 of former Title 40] may be cited as the 'Competition in Contracting Act of 1984'.''

SHORT TITLE

Act June 30, 1949, ch. 288, §1(a), 63 Stat. 377, as amended by Pub. L. 103–355, title X, §10005(a)(2), Oct. 13, 1994, 108 Stat. 3406; Pub. L. 107–217, §6(b), Aug. 21, 2002, 116 Stat. 1304; Pub. L. 108–178, §2(b)(1), Dec. 15, 2003, 117 Stat. 2640, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Property and Administrative Services Act of 1949'.''

[Pub. L. 107–217, §6(b), which had repealed section 1(a) of act June 30, 1949, set out above, was itself repealed effective Aug. 21, 2002, by Pub. L. 108–178, §2(b)(1), insofar as it related to section 1(a) of act June 30, 1949, and Pub. L. 108–178, §2(b)(1), further provided that section 1(a) of act June 30, 1949, was revived to read as if Pub. L. 107–217, §6(b), had not been enacted.]

REGULATIONS

Pub. L. 104–106, div. D, title XLIV, §4402, Feb. 10, 1996, 110 Stat. 678, provided that:

''(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this Act [see Tables for classification] shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act [Feb. 10, 1996].

''(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

''(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act [Feb. 10, 1996].

''(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this Act may provide for modification of an existing contract without consideration upon the request of the contractor.

''(e) SAVINGS PROVISIONS.—

''(1) VALIDITY OF PRIOR ACTIONS.—Nothing in this division [div. D (§§4001–4402) of Pub. L. 104–106, see Short Title of 1996 Amendment note above] shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 4401(b)(3) [set out as an Effective Date of 1996 Amendment note above] except to the extent and in the manner prescribed in such regulations.

''(2) RENEGOTIATION AND MODIFICATION OF PREEXISTING CONTRACTS.—Except as specifically provided in this division, nothing in this division shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act [Feb. 10, 1996].

''(3) CONTINUED APPLICABILITY OF PREEXISTING LAW.—Except as otherwise provided in this division, a law amended by this division shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

''(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

''(B) if no such date is specified in regulations, January 1, 1997.''

Pub. L. 103–355, title X, §10002, Oct. 13, 1994, 108 Stat. 3404, provided that:

''(a) PROPOSED REVISIONS.—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this Act [see Short Title of 1994 Amendment note above] shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act [Oct. 13, 1994].

''(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

''(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

''(d) MODIFICATIONS.—Final regulations promulgated pursuant to this section to implement an amendment made by this Act may provide for modification of an existing contract without consideration upon the request of the contractor.

''(e) REQUIREMENT FOR CLARITY.—Officers and employees of the Federal Government who prescribe regulations to implement this Act and the amendments made by this Act shall make every effort practicable to ensure that the regulations are concise and are easily understandable by potential offerors as well as by Government officials.

''(f) SAVINGS PROVISIONS.—(1) Nothing in this Act shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 10001(b)(3) [see Effective Date of 1994 Amendment note above] except to the extent and in the manner prescribed in such regulations.

''(2) Except as specifically provided in this Act, nothing in this Act shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act [Oct. 13, 1994].

''(3) Except as otherwise provided in this Act, a law amended by this Act shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

''(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

''(B) if no such date is specified in regulations, October 1, 1995.''

SEPARABILITY

Section 604, formerly § 504, of act June 30, 1949, renumbered by act Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583, provided that: ''If any provision of this Act [see Tables for classification], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.''

LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES

Pub. L. 110–417, [div. A], title VIII, § 867, Oct. 14, 2008, 122 Stat. 4551, provided that:

''(a) GUIDANCE FOR EXECUTIVE AGENCIES ON LINKING OF AWARD AND INCENTIVE FEES TO ACQUISITION OUTCOMES.—Not later than 1 year after the date of the enactment of this Act [Oct. 14, 2008], the Federal Acquisition Regulation shall be amended to provide executive agencies other than the Department of Defense with instructions, including definitions, on the appropriate use of award and incentive fees in Federal acquisition programs.

''(b) ELEMENTS.—The regulations under subsection (a) shall—

''(1) ensure that all new contracts using award fees link such fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance);

''(2) establish standards for identifying the appropriate level of officials authorized to approve the use of award and incentive fees in new contracts;

''(3) provide guidance on the circumstances in which contractor performance may be judged to be 'excellent' or 'superior' and the percentage of the available award fee which contractors should be paid for such performance;

''(4) establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance that is judged to be 'acceptable', 'average', 'expected', 'good', or 'satisfactory';

''(5) ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance or performance that does not meet the basic requirements of the contract;

''(6) provide specific direction on the circumstances, if any, in which it may be appropriate to roll over award fees that are not earned in one award fee period to a subsequent award fee period or periods;

''(7) ensure consistent use of guidelines and definitions relating to award and incentive fees across the Federal Government;

''(8) ensure that each executive agency—

''(A) collects relevant data on award and incentive fees paid to contractors; and

''(B) has mechanisms in place to evaluate such data on a regular basis;

''(9) include performance measures to evaluate the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes; and

''(10) provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

''(c) GUIDANCE FOR DEPARTMENT OF DEFENSE.—The Department of Defense shall continue to be subject to guidance on award and incentive fees issued by the Secretary of Defense pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2321 [10 U.S.C. 2302 note]).

''(d) EXECUTIVE AGENCY DEFINED.—In this section, the term 'executive agency' has the meaning given such term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).''

CLOSE THE CONTRACTOR FRAUD LOOPHOLE

Pub. L. 110–252, title VI, ch. 1, June 30, 2008, 122 Stat. 2386, provided that:

''SHORT TITLE

''SEC. 6101. This chapter may be cited as the 'Close the Contractor Fraud Loophole Act'.

''REVISION OF THE FEDERAL ACQUISITION REGULATION

''SEC. 6102. The Federal Acquisition Regulation shall be amended within 180 days after the date of the enactment of this Act [June 30, 2008] pursuant to FAR Case 2007–006 (as published at 72 Fed Reg. 64019, November 14, 2007) or any follow-on FAR case to include provisions that require timely notification by Federal contractors of violations of Federal criminal law or overpayments in connection with the award or performance of covered contracts or subcontracts, including those performed outside the United States and those for commercial items.

''DEFINITION

''SEC. 6103. In this chapter, the term 'covered contract' means any contract in an amount greater than $5,000,000 and more than 120 days in duration.''

EVALUATION BY COMPTROLLER GENERAL

Pub. L. 103–355, title X, § 10003, Oct. 13, 1994, 108 Stat. 3405, provided that not later than 180 days after the issuance in final form of revisions to the Federal Acquisition Regulation pursuant to section 10002 of Pub. L. 103–355, set out as a note above, the Comptroller General was to submit to Congress a report evaluating compliance with such section.

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 98–577, title I, § 101, Oct. 30, 1984, 98 Stat. 3066, provided that: ''The purposes of this Act are to—

''(1) eliminate procurement procedures and practices that unnecessarily inhibit full and open competition for contracts;

''(2) promote the use of contracting opportunities as a means to expand the industrial base of the United States in order to ensure adequate responsive capability of the economy to the increased demands of the Government in times of national emergency; and

''(3) foster opportunities for the increased participation in the competitive procurement process of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.''

COMMISSION ON GOVERNMENT PROCUREMENT

Pub. L. 91–129, Nov. 26, 1969, 83 Stat. 269, as amended by Pub. L. 92–47, July 9, 1971, 85 Stat. 102, established the Commission on Government Procurement, which was to study and investigate statutes, rules, regulations, procedures, and practices affecting Government procurement and to submit a final report to Congress on or before Dec. 31, 1972, on the results of this study, including recommendations for changes designed to promote economy, efficiency, and effectiveness in the procurement of goods, services, and facilities by and for

the executive branch of the Government. The Commission terminated 120 days after submission of the final report.

EX. ORD. NO. 13005. EMPOWERMENT CONTRACTING

Ex. Ord. No. 13005, May 21, 1996, 61 F.R. 26069, provided:

In order to promote economy and efficiency in Federal procurement, it is necessary to secure broad-based competition for Federal contracts. This broad competition is best achieved where there is an expansive pool of potential contractors capable of producing quality goods and services at competitive prices. A great and largely untapped opportunity for expanding the pool of such contractors can be found in this Nation's economically distressed communities.

Fostering growth of Federal contractors in economically distressed communities and ensuring that those contractors become viable businesses for the long term will promote economy and efficiency in Federal procurement and help to empower those communities. Fostering growth of long-term viable contractors will be promoted by offering appropriate incentives to qualified businesses.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States, including section 486(a) [now 121(a)] of title 40, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy*. The purpose of this order is to strengthen the economy and to improve the efficiency of the Federal procurement system by encouraging business development that expands the industrial base and increases competition.

SEC. 2. *Empowerment Contracting Program*. In consultation with the Secretaries of the Departments of Housing and Urban Development, Labor, and Defense; the Administrator of General Services; the Administrator of the National Aeronautics and Space Administration; the Administrator of the Small Business Administration; and the Administrator for Federal Procurement Policy, the Secretary of the Department of Commerce shall develop policies and procedures to ensure that agencies, to the extent permitted by law, grant qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress, including a price or an evaluation credit, when assessing offers for government contracts in unrestricted competitions, where the incentives would promote the policy set forth in this order. In developing such policies and procedures, the Secretary shall consider the size of the qualified businesses.

SEC. 3. *Monitoring and Evaluation*. The Secretary shall:

(a) monitor the implementation and operation of the policies and procedures developed in accordance with this order;

(b) develop a process to ensure the proper administration of the program and to reduce the potential for fraud by the intended beneficiaries of the program;

(c) develop principles and a process to evaluate the effectiveness of the policies and procedures developed in accordance with this order; and

(d) by December 1 of each year, issue a report to the President on the status and effectiveness of the program.

SEC. 4. *Implementation Guidelines*. In implementing this order, the Secretary shall:

(a) issue rules, regulations, and guidelines necessary to implement this order, including a requirement for the periodic review of the eligibility of qualified businesses and distressed areas;

(b) draft all rules, regulations, and guidelines necessary to implement this order within 90 days of the date of this order; and

(c) ensure that all policies and procedures and all rules, regulations, and guidelines adopted and implemented in accordance with this order minimize the administrative burden on affected agencies and the procurement process.

SEC. 5. *Definitions*. For purposes of this Executive order:

(a) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(b) ''Area of general economic distress'' shall be defined, for all urban and rural communities, as any census tract that has a poverty rate of at least 20 percent or any designated Federal Empowerment Zone, Supplemental Empowerment Zone, Enhanced Enterprise Community, or Enterprise Community. In addition, the Secretary may designate as an area of general economic distress any additional rural or Indian reservation area after considering the following factors:

(1) Unemployment rate;

(2) Degree of poverty;

(3) Extent of outmigration; and

(4) Rate of business formation and rate of business growth.

(c) ''Qualified large business'' means a large for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; and (2) either has a significant physical presence in the area of general economic distress or has a direct impact on generating significant economic activity in the area of general economic distress.

(d) ''Qualified small business'' means a small for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; (2) has a significant physical presence in the area of general economic distress; or (3) has a direct impact on generating significant economic activity in the area of general economic distress.

(e) ''Secretary'' means the Secretary of Commerce.

SEC. 6. *Agency Authority*. Nothing in this Executive order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law, including specifically other programs designed to promote the development of small or disadvantaged businesses.

SEC. 7. *Judicial Review*. This Executive order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

EXECUTIVE ORDER NO. 13202

Ex. Ord. No. 13202, Feb. 17, 2001, 66 F.R. 11225, as amended by Ex. Ord. No. 13208, Apr. 6, 2001, 66 F.R. 18717, which promoted preservation of open competition and Government neutrality towards Government contractors' labor relations on Federal and Federally funded construction projects, was revoked by Ex. Ord. No. 13502, §8, Feb. 6, 2009, 74 F.R. 6986, set out below.

EX. ORD. NO. 13502. USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS

Ex. Ord. No. 13502, Feb. 6, 2009, 74 F.R. 6985, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq*., and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

SECTION 1. *Policy*. (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination

among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

SEC. 2. *Definitions*.

(a) The term ''labor organization'' as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term ''construction'' as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term ''large-scale construction project'' as used in this order means a construction project where the total cost to the Federal Government is $25 million or more.

(d) The term ''executive agency'' as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term ''project labor agreement'' as used in this order means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

SEC. 3. (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

SEC. 4. Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the Construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, and Executive Orders.

SEC. 5. This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

SEC. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

SEC. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

SEC. 8. *Revocation of Prior Orders, Rules, and Regulations*. Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

SEC. 9. *Severability*. If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 10. *General*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 11. *Effective Date*. This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

BARACK OBAMA.

GOVERNMENT CONTRACTING

Memorandum of President of the United States, Mar. 4, 2009, 74 F.R. 9755, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government has an overriding obligation to American taxpayers. It should perform its functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers.

Since 2001, spending on Government contracts has more than doubled, reaching over $500 billion in 2008. During this same period, there has been a significant increase in the dollars awarded without full and open competition and an increase in the dollars obligated through cost-reimbursement contracts. Between fiscal years 2000 and 2008, for example, dollars obligated under cost-reimbursement contracts nearly doubled, from $71 billion in 2000 to $135 billion in 2008. Reversing these trends away from full and open competition and toward cost-reimbursement contracts could result in savings of billions of dollars each year for the American taxpayer.

Excessive reliance by executive agencies on sole-source contracts (or contracts with a limited number of sources) and cost-reimbursement contracts creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer. Reports by agency Inspectors General, the Government Accountability Office (GAO), and other independent reviewing bodies have shown that noncompetitive and cost-reimbursement contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results.

When awarding Government contracts, the Federal Government must strive for an open and competitive process. However, executive agencies must have the flexibility to tailor contracts to carry out their missions and achieve the policy goals of the Government. In certain exigent circumstances, agencies may need to consider whether a competitive process will not accomplish the agency's mission. In such cases, the agency must ensure that the risks associated with noncompetitive contracts are minimized.

Moreover, it is essential that the Federal Government have the capacity to carry out robust and thorough management and oversight of its contracts in order to achieve programmatic goals, avoid significant overcharges, and curb wasteful spending. A GAO study last year of 95 major defense acquisitions projects found cost overruns of 26 percent, totaling $295 billion over the life of the projects. Improved contract oversight could reduce such sums significantly.

Government outsourcing for services also raises special concerns. For decades, the Federal Government has relied on the private sector for necessary commercial services used by the Government, such as transportation, food, and maintenance. Office of Management and Budget Circular A–76, first issued in 1966, was based on the reasonable premise that while inherently governmental activities should be performed by Government employees, taxpayers may receive more value for their dollars if non-inherently governmental activities that can be provided commercially are subject to the forces of competition.

However, the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private sector competition has been blurred and inadequately defined. As a result, contractors may be performing inherently governmental functions. Agencies and departments must operate under clear rules prescribing when outsourcing is and is not appropriate.

It is the policy of the Federal Government that executive agencies shall not engage in noncompetitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards have been put in place to protect the taxpayer. In addition, there shall be a preference for fixed-price type contracts. Cost-reimbursement contracts shall be used only when circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract. Moreover, the Federal Government shall ensure that taxpayer dollars are not spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the Federal Government's needs and to manage the risk associated with the goods and services being procured. The Federal Government must have sufficient capacity to manage and oversee the contracting process from start to finish, so as to ensure that taxpayer funds are spent wisely and are not subject to excessive risk. Finally, the Federal Government must ensure that those functions that are inherently governmental in nature are performed by executive agencies and are not outsourced.

I hereby direct the Director of the Office of Management and Budget (OMB), in collaboration with the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Administrator of General Services, the Director of the Office of Personnel Management, and the heads of such other agencies as the Director of OMB determines to be appropriate, and with the participation of appropriate management councils and program management officials, to develop and issue by July 1, 2009, Government-wide guidance to assist agencies in reviewing, and creating processes for ongoing review of, existing contracts in order to identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency's needs, and to formulate appropriate corrective action in a timely manner. Such corrective action may include modifying or canceling such contracts in a manner and to the extent consistent with applicable laws, regulations, and policy.

I further direct the Director of OMB, in collaboration with the aforementioned officials and councils, and with input from the public, to develop and issue by September 30, 2009, Government-wide guidance to:

(1) govern the appropriate use and oversight of sole-source and other types of noncompetitive contracts and to maximize the use of full and open competition and other competitive procurement processes;

(2) govern the appropriate use and oversight of all contract types, in full consideration of the agency's needs, and to minimize risk and maximize the value of Government contracts generally, consistent with the regulations to be promulgated pursuant to section 864 of Public Law 110–417;

(3) assist agencies in assessing the capacity and ability of the Federal acquisition workforce to develop, manage, and oversee acquisitions appropriately; and

(4) clarify when governmental outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110–417 (31 U.S.C. 501 note).

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

DEFINITIONS

The definitions in section 102 of Title 40, Public Buildings, Property, and Works, apply to this subchapter.

§ 252. Purchases and contracts for property

(a) Applicability of subchapter; delegation of authority

Executive agencies shall make purchases and contracts for property and services in accordance with the provisions of this subchapter and implementing regulations of the Administrator; but this subchapter does not apply—

(1) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(2) when this subchapter is made inapplicable pursuant to section 113(e) of title 40 or any other law, but when this subchapter is made inapplicable by any such provision of law, sections 5 and 8 of this title shall be applicable in the absence of authority conferred by statute to procure without advertising or without regard to said section 5 of this title.

(b) Small business concerns; share of business

It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for property and services for the Govern-